



Court for the Northern District of West Virginia, that court first noted that raising such argument for the first time on a collateral attack was not appropriate:

First, even if the restitution order entered by the sentencing court violated the prohibition set forth in *Miller, supra*, that decision was decided in the context of a direct appeal. Here, the petitioner did not challenge the district court's restitution order via a direct appeal. In a collateral attack, for an alleged error of law to merit relief, it must be shown that the claimed error constituted a fundamental defect which inherently results in a complete miscarriage of justice. See *United States v. Addinizio*, 442 U.S. 178, 99 S.Ct. 2235, 60 L.Ed.2d 805[] (1979). Clearly, an order that petitioner pay his restitution while incarcerated through the IFRP falls far short of a complete miscarriage of justice.

Dobbins v. Deboo, 2009 WL 3584004, 5 (N.D.W.Va. Oct. 28, 2009). As to the merits of the claim, the court found that

at least one district court recently found that the ‘holding in *Miller* does not stand for the proposition that a prisoner's participation in the BOP's IFRP program is an abdication of the court's “core judicial function.”[’] .... The petitioner eventually filed a § 2241 petition arguing that, because the sentencing court did not set a specific schedule for collecting the fine during his incarceration, the BOP was prohibited from setting a payment schedule. The petitioner . . . like the petitioner herein, relied on the Fourth Circuit decision in *Miller, supra*. However, the district court concluded that the holding in *Miller* does not stand for the proposition that a prisoner's participation in the BOP's IFRP program is an abdication of the court's “core judicial function.” .... [T]he IFRP simply allows the prisoner to satisfy payment through a BOP program. Accordingly, the undersigned concludes that the order entered by the United States District Court for the Northern District of Ohio did not violate the *Miller* mandate.

Id. at 6. In this case, this court made no provision in its Amended Judgment recommending defendant's participation in the IFRP, see Amended Judgment (#126) at 2; thus, the court can only conclude that defendant's participation is *voluntary*. In any event, the Court of Appeals for the Fourth Circuit has rejected a nearly identical contention made under Miller

In his pro se supplemental brief, Caudle's first claim is that the district court erred by delegating authority to the Bureau of Prisons (“BOP”) to set the timing and payment amount of his criminal monetary penalties through the Inmate Financial Responsibility Program (“IFRP”). A district court may not delegate its authority to set the amount and timing of restitution to the BOP or a probation officer, without retaining ultimate authority over such decisions. *United*

*States v. Miller*, 77 F.3d 71, 77-78 (4th Cir.1996). “[T]he statutory duty imposed upon district courts to fix the terms of a fine must be read as exclusive because the imposition of a sentence, including the terms of probation or supervised release, is a core judicial function.” *Id.* at 78; see also 18 U.S.C. § 3572(d). In this case, the district court did set the amount and timing of the criminal monetary penalties by ordering payment due immediately. Furthermore, participation in the IFRP does not violate *Miller*. See *Matheny v. Morrison*, 307 F.3d 709, 712 (8th Cir.2002) (holding that BOP has discretion to place inmate in IFRP when sentencing court has ordered immediate payment of court-imposed fine) (citing *McGhee v. Clark*, 166 F.3d 884, 886 (7th Cir.1999), and *Montano-Figueroa v. Crabtree*, 162 F.3d 548, 549-50 (9th Cir.1998)). Therefore, Caudle's claim is without merit.

United States v. Caudle, 261 Fed.Appx. 501, 503-504, 2008 WL 110945, 2 (4<sup>th</sup> Cir. Jan. 10, 2008) (unpublished).<sup>1</sup> As this court set the amount and timing of restitution payments by ordering immediate payment, Amended Judgment at 5, defendant's participation in the IFRP does not violate Miller. Moreover, the IFRP is a *voluntary* program which allows the BOP to withhold prisoner's wages for payment of court-ordered monetary obligations, and does not violate due process. Matheny v. Morrison, 307 F.3d 709, 712 (8th Cir.2002).

In denying the instant motion, the court emphasizes that defendant work with her case manager and explain to such officer why she believes the payment schedule is too onerous and then explain to such officer why she believes the standard payment under 28 C.F.R. §545.11(b)(11) would be more appropriate.

Having considered defendant's motion and reviewed the pleadings, the court enters the following Order.

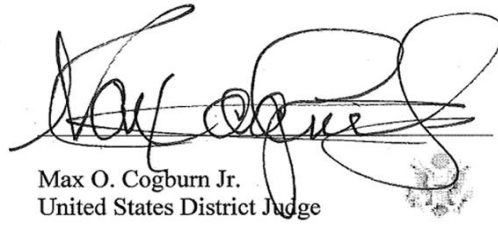
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1 While such unpublished, *per curiam* decision is not precedential, the court finds it to be highly persuasive.

**ORDER**

**IT IS, THEREFORE, ORDERED** that defendant's Motion to Alter Her Quarterly Payment Under the IFRP (#181) is DENIED.

Signed: October 16, 2013



Max O. Cogburn Jr.  
United States District Judge